

REMARKS

Applicant has carefully reviewed the Examiner's May 4, 2004 Official Action and respectfully requests reconsideration based on the above amendments and the following comments.

Claims 23-51 and 53 remain in the application for consideration.

In response to the Examiner's rejection of claims 23-51 and 53 under 35 U.S.C. 112, second paragraph, Applicant has amended the claims to eliminate each of the problems identified by the Examiner. Applicant respectfully submits that this rejection has now been overcome.

The Examiner has further rejected claims 23-31, 37, 50, 51 and 53 under 35 U.S.C. 103(a) as being unpatentable over Jencka in view of Zuzack; claims 38-41 under 35 U.S.C. 103(a) as being unpatentable over Jencka in view of Zuzack further in view of Krinke; claims 23-31, 37, 42, 43, 46-48, 51, 52, and 53 under 35 U.S.C. 103(a) as being unpatentable over Krattiger in view of Jencka; claims 32-36 under 35 U.S.C. 103(a) as being unpatentable over Krattiger in view of Jencka and further in view of F. A. Nuttall; and claims 38-41 under 35 U.S.C. 103(a)

as being unpatentable over Krattiger in view of Jencka and further in view of Wright.

Applicant respectfully traverses all of these rejections especially as applied to claims 23 and 53 as amended.

The Examiner maintains that Jencka discloses an upper retaining means (36) elongate in a crosswise direction having an underside a rubber-elastic portion (18) that has a lip portion (24) pointing toward the back. Applicant does not agree that this feature of Jencka is equivalent to the lip (13) as now described in amended claims 23 and 53. Retention face (24) of Jencka is clearly not wedge shaped nor does it have an edge projecting down toward the lower carrying means.

The retention face (24) is defined as being the part of the engagement member (18) that frictionally holds compact disc cases (50) or other deposited items in place in the storing device. In all the figures in the patent, said engagement member is depicted as being a hollow member having a wall whose outer circumference corresponds to somewhat more than half a cylinder. This characteristic shape is also stated literally in words in claim 1 (Column 12, lines 6-8) and claim 3 (column 12, lines 40-42).

In column 3, lines 51-53, the engagement member is defined as preferably being an extruded tube-like structure made from a resilient plastic and having deformable, convex walls.

In fact, there is no disclosure at all by Jencka that the retention face (24) could be anything other than an outer surface on a cylindrical tubular structure elongated in the crosswise direction (of the device). Indeed, such cylindrical tubular retention face will be completely unable to provide the surprising novel possibility of leafing through a stack of CD cases deposited in a side-by-side relationship in a CD carrying device, as each case will be impaired in swinging about a vertical axis of rotation defined by its upper and lower engagement points as the case will fall out of the carrying device if it is forced to swing about such axis. Indeed, Applicant has initially tried such type of construction shape of the retention surface, and found that it did not work at all.

In comparison to the claimed invention, if the engagement member has the form of "a wedge shaped lip (13), wherein the edge of the wedge shaped lip projects downward substantially towards the lower carrying means (6) thus facing towards and adapted to be engaged with an upper edge (40) of

an item (3), when said item is inserted into the carrying device (1)", this surprising novel functionality is obtainable as it is explained in detail on page 5, lines 9-15, and page 14, lines 6-24 of the specification. Applicant believes that the Examiner will be able to convince himself of this fact by trying it in the demonstration model submitted with this response. Applicant will demonstrate this personally if that is considered useful.

Applicant respectfully submits that this new functionality is not obtainable with the CD rack of Jencka, and indeed, Jencka does not disclose it anywhere.

The lip member disclosed by Jencka has a completely different orientation than that of the lip of the present invention, viz. turned about 90° to the downwards direction so it projects substantially horizontally instead of vertically, and the functionality of the lip member of Jencka is also completely different to that of the claimed invention.

Applicant also notes that Jencka, column 8, lines 11-16 states that "For optimal functioning it has been determined that engagement 18 should be located so as to contact fully deposited CD case 50 at a point two thirds of its total depth forward from the interior surface of back wall 38, or one third of its total depth back from its outward-facing side."

This feature is also quite different from that according to the claimed invention, wherein the engaging lip for optimal functioning is located a distance less than 15mm, preferably less than 10mm, and most preferably about 5mm, as measured from the stop behind the retaining means to the lip, vide e.g. claims 29, 30, and 31 filed on October 17, 2003. As the length of the upper edge of a CD case (i.e. its total depth) usually is about 142mm, this means that the engagement point between the lip and a fully inserted CD case is only from about one ninth (1/9) to about one twenty-eighth (1/28) forward from the interior (front) surface of the back (stop) of the carrying device of the claimed invention.

Thus, when a CD case is fully inserted into a carrying device of the claimed invention, only its uppermost upper corner 43 (and lower 41) is engaged by the lip 13 (and the carrying member 6), cf. Figure 5 and page 5, lines 5-8 and page 13, lines 21-22 of the original description.

This feature provides for the completely new possibility of leafing through a stack of CD cases deposited in a side-by-side relationship in a carrying device according to the claimed invention, as each case will swing about an axis of rotation close to its rear (innermost) vertical edge without falling out of the carrying device, cf. page 5, lines 9-15 and

page 14, lines 6-24 of the specification. As noted above, this new functionality is not obtainable with the CD rack of Jencka and indeed, Jencka does not disclose it anywhere.

Applicant submits that the invention is new and unobvious and not disclosed by the cited art. Accordingly, Applicant respectfully solicits the Examiner's early review and issuance of this application.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant(s)

By 
Norman J. Latker
Registration No. 19,963

NJL:ma

Telephone No.: (202) 628-5197
Facsimile No.: (202) 737-3528
G:\BN\A\Actj\Fenger1\Pto\Amd 4August04.doc